

RULES OF THE
DISTRICT COURT OF THE
FOURTH JUDICIAL DISTRICT

EFFECTIVE DECEMBER 29, 1995

(Including Amendments)

SCOPE AND EFFECTIVE DATE

These rules for the district court of the Fourth Judicial District shall become effective upon approval by the Supreme Court and publication in the Nebraska Advance Sheets and shall supplement the Uniform District Court Rules of Practice and Procedure adopted by the Supreme Court.

Adopted effective December 29, 1995.

RULE 4-1

ORGANIZATION OF COURT

A. Presiding Judge. The presiding judge, elected each year at the annual or special meeting of judges, shall supervise the administration of the court.

B. Assignments. By majority vote of all the judges, any assignment of the presiding judge affecting the entire court may be reviewed at a special meeting of the judges called for that purpose, and by majority vote of all the judges, an assignment by the presiding judge may be changed.

C. Term of Court. The regular term of the court shall be deemed to commence on January 1 of each calendar year, and shall be deemed to conclude on December 31 of the same calendar year. No order opening or closing such term shall be required.

Adopted effective December 29, 1995.

RULE 4-2

PLEADINGS

A. Identification. Each pleading filed with the Clerk of the District Court and each order submitted for judicial action must be specifically identified by type, e.g., Motion (Continuance); Motion (To Compel Response To Discovery Request); Motion (Temporary Allowances); Motion (To Suppress Evidence); Order (Summary Judgment);

Order (Show Cause--Contempt). The caption of each complaint or amended complaint in a civil action shall state whether the action is one at law or in equity.

B. Pretrial and Posttrial Motions.

1. Unless otherwise ordered by the court, all pretrial and posttrial motions or similar filings such as special appearances which require a hearing shall be filed in the case prior to the scheduled hearing. At the time of making said filing, the party shall obtain a date for hearing thereon from the judge in charge of the case or, in the absence of the judge or at the judge's direction, from a member of the judge's office staff. Timely notice of said hearing shall be personally delivered or mailed to the opposing party. Except as may be otherwise specifically required by statute or rule of the Supreme Court, use of ordinary mail shall constitute sufficient service of any notice required by this or any other of these local rules.

2. The court may, in its discretion, hear oral argument on any motion or similar filing by telephone conference, provided that all conversations of all parties are audible to all persons present. A party shall schedule such telephone calls at a time mutually agreeable to all parties and the court. The court may direct which party shall pay the cost of the telephone calls.

C. Continuances Or Additional Time To Plead. Motions or applications for continuance of any matter shall state the reasons a continuance should be granted and must be filed before the time set for the matter sought to be continued. Except where unusual circumstances require, no more than one continuance may be granted. Stipulations for continuances shall be subject to the approval of the court. All continuances shall be to a date certain and stated in the order granting the same, unless otherwise ordered by the court. No order granting a continuance shall be made *ex parte*. In the event such motion or application fails to show that the motion has been agreed upon, it shall be set for hearing in the same manner as any other motion.

D. Computer Data Base. The Clerk and Court Administrator shall each be responsible for keying into the computer data base the attorney identification numbers and the file information for each case, and for keeping the data base current.

E. Pleadings In Default. A party in default of a pleading may, before judgment on motion, notice, and good cause shown, file the same within such time and upon such terms as the court may order.

F. Amendments to Pleadings. Amendments to pleadings after the answer is filed may be allowed within the discretion of the court. In no instance shall an amendment of a pleading be made by erasure, substitution, interlineation, or otherwise except by leave of the court. A party who has obtained leave to amend a pleading, but fails to do so within the time limited, shall be considered as electing to abide by his former pleading. In no case of amendment shall the original pleading be obliterated or withdrawn from the files.

G. Costs. Except for criminal cases and proceedings wherein a poverty affidavit is filed, court costs shall be paid when actions are commenced and thereafter when liability for additional costs accrues. An attorney is responsible to the clerk for costs incurred at the attorney's request and shall immediately pay the same upon receipt of the clerk's statement of such fees.

H. Interrogatories. In civil actions, not more than fifty (50) interrogatories, including subquestions, may be served on an adverse party without leave of court.

I. Proof Of Service Of Papers. Except as otherwise provided by statute or by order of the court, proof of service of any pleading, motion, or other paper required to be served shall be made by: (1) a certificate showing the name and address of any party on whom service was had; (2) written receipt of the opposing party; (3) affidavit of the person making service; (4) return of the county sheriff; or (5) other proof satisfactory to the court. Failure to make proof of service will not affect the validity of the service, and the court may at any time allow the proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to substantial rights of any party affected thereby.

Adopted effective December 29, 1995; Rule 4-2A amended October 26, 2005.

RULE 4-3

DOMESTIC RELATIONS CASES

A. Contested Custody. Whenever a party in a domestic relations case determines that custody of a minor child will be genuinely contested, the court shall be informed thereof in order that appointment of a guardian *ad litem* for the minor child may be promptly considered.

B. Referee Exceptions. Except for contempt matters taken without delay to the district court from a hearing before a child-support referee, exceptions to the findings and recommendation of the referee shall be filed, along with a demand for a hearing before the district court, within five (5) days of the referee's announcement of, or, in cases in which the matter is taken under advisement, within fourteen (14) days of the filing of, the referee's report. A copy of such exception(s), along with a notice of further hearing before the district court judge to whom the matter has been assigned pursuant to Rule 4-12 A, shall be served upon the opposing party or parties (and counsel). Upon receiving the findings and recommendations of the referee, and a transcript of the hearing, the district court shall conduct a review on the report of the referee and, in the court's discretion, may ratify or modify the recommendations of the referee and enter judgment based on such recommendations, with the rights of appeal and to move for rehearing reserved to all parties.

The party filing the exceptions shall promptly deliver a copy of the exceptions to the

courtroom to which the matter has been assigned pursuant to Rule 4-12 A. The certificate of readiness procedure shall not apply in such cases.

C. Assignment of Cases. All post-decree proceedings presented for filing within twenty-four (24) months after the entry of a decree of dissolution shall be assigned to the judge to whom the case was originally assigned at the time of the filing of the action. Post-decree proceedings presented for filing after the passage of twenty-four (24) months from the entry of the decree shall be assigned to a judge by random selection through use of such computerized or manual means as may be designated by the presiding judge.

D. Mediation.

1. Parties to a domestic-relations matter involving children are required to attend the District Court Conciliation and Mediation Services parent-education program “What About The Children” within sixty (60) days from receipt of service of process. This includes filings for dissolution of marriage and determination-of-paternity cases which involve issues of custody, parenting time, visitation, or other access with a child.

The parties to motions to compel existing orders which involve parenting issues; applications to modify decrees of dissolution which involve parenting issues; and applications to modify decrees of paternity which involve parenting issues shall be subject to the requirements of this rule and are required to attend the parent-education program “Communication Skills For Parents In Conflict,” unless all issues are resolved by agreement and entry of a stipulated order. Participation in either course may be delayed or waived by the court for good cause shown. Failure or refusal by any party to participate in such a course as ordered by the court shall not delay the entry of a final judgment or an order modifying a final judgment in such action by more than six (6) months and shall in no case be punished by incarceration.

Each party shall be responsible for the costs of attending either parenting education course. At the request of any party, or based upon screening or recommendation of an attorney or mediator, the parties shall be allowed to attend separate courses or to attend the same course at different times, particularly if child abuse or neglect, domestic intimate-partner abuse, or unresolved parental conflict is or has in the past been present in the relationship, or if one party has threatened the other party.

2. For purposes of Fourth Judicial District Rule 4-3D, “facilitator” shall mean persons qualified as “approved specialized mediators” pursuant to Neb. Rev. Stat. § 43-2938(3) and “specialized alternative dispute resolution” as defined by Neb. Rev. Stat. § 43-2922(22) shall also be referred to as “facilitation.”

When the parties or their counsel are unable to negotiate a parenting plan agreement which satisfies the requirements of the Parenting Plan Checklist, then the parties are required to meet and confer with either the Director of the District Court Conciliation and Mediation Services or another assigned mediator to complete a Parenting Plan, including all issues of child custody, parenting time, visitation, grandparent visitation, other access, and any other issues relating to the children that may be susceptible to mediation or the specialized alternative dispute resolution process.

Parties or counsel are required to notify the Director of the District Court Conciliation and Mediation Services of any request for delay in assignment of a mediator or facilitator if the parties or counsel are attempting to negotiate a Parenting Plan agreement, which agreement shall be required to comply with the Parenting Plan Checklist. In the event that there is a failure to request a delay of mediator or facilitator assignment, one shall be assigned pursuant to this rule.

An individual party, a guardian ad litem, or a social service agency may request mediation, specialized alternative dispute resolution, or other alternative dispute resolution process for a matter involving an issue of custody, parenting time, visitation, other access, or a related matter at any time prior to the filing or after the filing of an action with this court. Upon receipt of such request, each mediator, court conciliation program, or approved mediation center shall provide to each party information about mediation and the specialized alternative dispute resolution process.

At any time in the proceedings, the court may refer a case to mediation or the specialized alternative dispute resolution process in order to attempt resolution of any relevant matter. The court may state a date for the case to return to court, and the court shall not grant an extension of such date except for good cause shown.

3. Prior to commencing an initial mediation session, the mediator shall provide an initial, individual screening session with each party to assess the presence of child abuse or neglect, unresolved parental conflict, domestic intimate-partner abuse, other forms of intimidation or coercion, or a party's inability to negotiate freely and make informed decisions. If any of these conditions exists, the mediator shall direct the parties to return to the Conciliation and Mediation Services Office for assignment of a specialized alternative dispute resolution process that addresses safety measures for the parties.

When there are allegations of domestic intimate-partner abuse or unresolved parental conflict between the parties in any proceeding, or when screening by a mediator, mediation center, or the Conciliation and Mediation Services Office identifies the presence of child abuse or neglect; unresolved parental conflict; domestic intimate-partner abuse; other forms of intimidation or coercion; or a party's inability to negotiate freely and make informed decisions, then mediation shall not be required; however, the parents shall be required to meet with a facilitator in the court's specialized alternative dispute resolution process.

The specialized alternative dispute resolution process shall begin with each parent meeting individually with a qualified facilitator to provide an opportunity for the facilitator to educate each party about the process; obtain informed consent from each party in order to proceed; establish safety protocols; allow support persons to attend sessions; and consider opt-out-for-cause. Any party may terminate after an initial, individual screening session and one specialized alternative dispute resolution session are held. The primary consideration in each specialized alternative dispute resolution session shall be the safety of each party and each child. The facilitator of the process has a duty to determine whether to proceed in individual sessions or caucus sessions in order to address safety and freedom to negotiate. Joint sessions shall not be used unless, after a safety assessment by the facilitator, all parties agree to a joint session to be conducted at the courthouse, with appropriate safety measures in place.

No trial date or other dispositive hearing will be scheduled until (1) attendance at the required parent education seminar has been completed and mediation or other specialized alternative dispute resolution process has been attempted to resolve issues of custody, parenting time, visitation, or other access, and (2) the parties have filed a Certificate of Readiness For Trial or a Proposed Scheduling Order pursuant to Fourth Judicial District Rule 4-10, provided, however, that failure or refusal to participate by a party shall not delay entry of a final judgment by more than six (6) months.

Notwithstanding the language in this rule, issues of domestic-violence, domestic intimate-partner abuse, or child abuse or neglect may, upon consideration by the trial court, disqualify the parties from parent education, mediation, or the specialized alternative dispute resolution processes.

4. The Mediation Committee will prepare a letter, for distribution by the District Court Administrator, advising the filing parties and their attorneys that attendance at the Conciliation and Mediation Services seminar “What About the Children?” or “Communication Skills For Parents in Conflict” is mandatory and must be completed within the time frame specified in this rule. The letter should also advise the parties and counsel (1) that Parenting Plans and issues of child custody, parenting time, visitation, or other access with a child will be referred for mediation or specialized alternative dispute resolution; (2) that no trial or other dispositive hearing will be scheduled until attendance at the required parent-education seminar has been completed and mediation or specialized alternative dispute resolution to resolve issues of custody, parenting time, visitation, or other access has been attempted; (3) that failure or refusal to participate by a party shall not delay entry of a final judgment by more than six (6) months; and (4) that issues of domestic-violence, domestic intimate-partner abuse, or child abuse or neglect may, upon consideration by the trial court, disqualify the parties from parent education, mediation, or the specialized alternative dispute resolution processes. The Clerk of the District Court is directed to include this letter with the filing and service packets distributed by the Clerk.

5. The Office of Conciliation and Mediation Services shall maintain a list of mediators and facilitators approved by the District Court judges and the Mediation Committee of the District Court. These mediators and facilitators must meet State of Nebraska (or equivalent) standards for training in order to qualify. The following requirements apply to all participating mediators and facilitators: Court-approved mediators and facilitators will determine their own fees and will provide a copy of their fee schedule to the Conciliation and Mediation Services Director. In order to be on the list of court-approved mediators and facilitators, a mediator or facilitator must agree to use a sliding-fee scale of \$25 to \$75 per person per hour, determined on the basis of what each party is able to pay. Court-approved mediators and facilitators must also agree to take pro bono cases on an “as needed” basis. The Conciliation and Mediation Services Director will determine the need for such pro bono services, so that the burden of these cases is equitably distributed among the participating mediators and facilitators.

6. Mediators and facilitators involved in proceedings shall participate in training to enable them to recognize child abuse or neglect, domestic intimate-partner abuse, and unresolved parental conflict and its potential impact upon children and families.

7. Prior to participation in the program, qualified mediators and facilitators will be required to attend an orientation session, which will be conducted by the Director of Conciliation and Mediation Services, to review the mediation and specialized alternative dispute resolution process procedures, as well as the Parenting Plan Checklist. Each participating mediator and facilitator shall agree to the court requirements for participation, including a requirement to observe all statutory requirements for mediators in the mediation process and for facilitators in the specialized alternative dispute resolution process as established under the Nebraska Parenting Act. Each mediator and facilitator will be asked to sign a statement indicating acknowledgment and acceptance of the requirements.

8. When a judge refers a case for mediation or specialized alternative dispute resolution, the judge will indicate the issues to be mediated or facilitated, as well as any choice of a mediator or facilitator if the judge has a preference. The judge may also indicate whether there is a particular mediator or facilitator whom the judge does not wish to use. The attorneys for the parties may also mutually agree upon the choice of a mediator or facilitator and may indicate whether they wish the parties to mediate any issues other than custody, parenting time, visitation, or other access with a child. If financial issues are to be mediated, the case will be assigned to an attorney mediator.

9. When the court refers parties to mediation or specialized alternative dispute resolution, the attorneys will be requested to bring the parties to the Conciliation and Mediation Services Office forthwith or to immediately provide the Conciliation and Mediation Services Office with all necessary client information, so the staff can confer with the parties and their attorneys and discuss the appropriate process and selection of a mediator or facilitator. Unless the parties or attorneys have requested a specific mediator or facilitator, the Conciliation and Mediation Services Office will assign, from the rotating list, the next mediator or facilitator appropriate to the parties and their needs, and the Conciliation and Mediation Services Director will contact the mediator or facilitator to confirm the mediator's or facilitator's acceptance of the case. The Conciliation and Mediation Services staff will send paperwork to the mediator or facilitator, who must advise the Conciliation and Mediation Services staff, within ten (10) days of receipt of the paperwork, of the date for the parties' first appointment. The Conciliation and Mediation Services staff will screen each case for domestic violence, child abuse or neglect, unresolved parental conflict, domestic intimate-partner abuse, other forms of intimidation or coercion, or a party's inability to negotiate freely and make informed decisions. If any one or more of these elements are found to exist, then mediation shall not be required; however, the parents shall be required to meet with a facilitator in the court's specialized alternative dispute resolution process.

10.a. If the parties reach an agreement through mediation or the specialized alternative dispute-resolution process, the agreement shall be reduced to writing. The mediator or the

facilitator shall provide copies of the agreement to the parties and their attorneys, together with a notice informing the parties and their attorneys of their right to express their objections to the written agreement. The notice shall inform the parties and their attorneys that they have twenty-one (21) days from the date of the notice to notify the mediator or facilitator and the Conciliation and Mediation Services Office of any written objections to the terms of the agreement. The written objections shall be specific and shall not violate the statutory protections of confidentiality or privilege of the parties by being filed with the clerk of the court. All matters not specifically objected to shall be deemed final. If no objections are received within twenty-one (21) days, then the agreement shall automatically be forwarded to the Conciliation and Mediation Services Office for final processing, pursuant to subsection (c) below.

If the parties and counsel negotiate a Parenting Plan agreement, which agreement shall fully comply with the Parenting Plan Checklist, they shall forward the agreement to the Conciliation and Mediation Services Office immediately after signing, pursuant to subsection (c) below.

b. Upon the filing by either party or attorney of objections to the agreement, the mediator or facilitator shall forthwith schedule a re-mediation or re-facilitation session on the disputed issues identified in the written objection. The mediator or facilitator may charge additional fees for the re-mediation or re-facilitation session and related expenses. Following re-mediation or re-facilitation efforts, the mediator or facilitator shall forward to the Conciliation and Mediation Services Office the re-mediated or re-facilitated agreement, which shall be clearly denominated the “re-mediated agreement” or the “re-facilitated agreement,” and which shall recite those issues, if any, which remain contested.

c. All agreements shall be forwarded to the Conciliation and Mediation Services Office, where the Conciliation and Mediation Services staff shall review said agreements for compliance with the Parenting Plan Checklist. The Conciliation and Mediation Services staff shall then forward a copy of the final agreement, along with the appropriate closure form, to the judge to whom the case is assigned, and to the court file.

d. At trial, parties shall not present evidence intended to object to a provision in an approved parenting plan or to show a material change in circumstances subsequent to the filing of a final agreement unless a written motion asking leave of the court to present such evidence at trial, accompanied by a notice of hearing, has been filed with the court and has been heard and granted prior to the trial.

11. The Conciliation and Mediation Services staff will follow up on the deadlines set by the court, including any extensions of time that have been granted.

12. *Amendment and Modification cases.* When the parties are mediating or facilitating amendments to existing decrees or modification proceedings, they may directly request mediation or specialized alternative dispute resolution through their previous mediator or facilitator or may request re-assignment to a different person through the Conciliation and Mediation Services Office.

13. The Mediation Committee will be a standing committee of the District Court and will be composed of four (4) district judges, the Conciliation and Mediation Services

Director, at least one outside mediator/advisor, and such other persons as the Committee deems necessary. The Chair Judge of Conciliation and Mediation Services will chair this Committee and may be consulted individually, as may be needed by the Conciliation and Mediation Services Director, for answers on day-to-day operations of the mediation program.

14. The Mediation Committee of the District Court may make such other operating rules as may be needed to facilitate the beginning and continuation of this mediation program.

Adopted effective December 29, 1995; amended effective May 1, 1998; amended effective March 12, 1999; amended effective June 19, 2002; amended effective January 18, 2007; amended effective May 7, 2008.

RULE 4-4

CRIMINAL CASES

A. Criminal Trials. Criminal cases shall, as nearly as possible, be called for trial in the order of appearance on the docket.

B. Criminal Trial Lists. Once a month the Court Administrator shall prepare a Criminal Trial List for each court. The trial list shall consist of cases assigned for trial, commencing with the lowest docket number.

C. Jail Census. Once a month the Court Administrator shall submit to the judges a list of persons confined in the Douglas County Correctional Center, who have been bound over for trial in the District Court and against whom informations have been filed.

D. Arraignment Day. In all felony cases, a defendant bound over to stand trial in the District Court shall appear for arraignment in the District Court on the second Thursday after such bindover date, unless otherwise directed by the court or Court Administrator.

E. Criminal Jury Trial Priority. For the purpose of jury selection, those courts trying criminal cases shall be given priority.

F. Failure to Appear. If a defendant fails to appear and a bond forfeiture is ordered, it shall be the duty of the prosecutor to take all necessary further legal action to ensure that judgment is entered upon the bond forfeiture.

G. Discovery Guidelines in Felony Cases. In the interest of the administration of the court and to ensure compliance with Case Progression Standards, the following guidelines shall apply to all felony cases in which mutual and reciprocal discovery is ordered:

1. Copies of all police reports in the possession of the prosecutor shall be given to the defendant at the time of arraignment. Copies of any additional or supplemental reports

the prosecutor shall receive shall upon receipt be given forthwith to the defendant. The defendant shall promptly provide copies of all relevant and unprivileged reports to the prosecutor;

2. The prosecutor attending a pretrial conference shall be fully apprised of the case and shall have the authority to make decisions concerning trial dates, discovery, pleas, and similar matters relating to the timely disposition of the case. Any attorney attending such a conference on behalf of a defendant shall likewise be fully apprised of the case and shall have obtained the authority of the defendant to make like decisions.

Adopted effective December 29, 1995; amended effective April 18, 1997.

RULE 4-5

BRIEFS

In cases involving controverted questions of law, trial briefs must be submitted before commencement of the trial.

Adopted effective December 29, 1995.

RULE 4-6

DISMISSALS AND SETTLEMENTS

When a case is resolved by settlement stipulation, the case shall be placed on inactive status until such time as the settlement is consummated, at which time the case shall be dismissed. If the settlement stipulation is not consummated, the case may be reinstated to active status upon the motion of any party.

Adopted effective December 29, 1995.

RULE 4-7

COURTROOM DECORUM

A. Searches. In the discretion of the security officers, upon order of the court, any person may be subjected to a search of his or her person for possession of any weapons, destructive device, or components thereof.

B. Media Coverage. Broadcasting, televising, taking photographs, and, except for making the record of the proceeding or assuring the accuracy thereof, audio and video recording

in the courtroom and area immediately adjacent thereto during sessions of court or recesses between sessions are prohibited.

Adopted effective December 29, 1995.

RULE 4-8

DUTIES OF COURT ADMINISTRATOR

The Court Administrator shall have general supervision over and administer the nonjudicial activities and functions of the court; appoint and remove and direct the work of all personnel of the office of the Court Administrator; procure supplies and equipment; provide reports relating to the business and administration of the court; prepare the court's budget and payroll; maintain liaison with governmental and other public and private groups interested in the administration of the court; attend meetings of the judges and serve as secretary; and perform such other duties assigned by the court for proper and efficient administration. In addition, the Court Administrator shall be responsible for the management, allocation, and release of jurors. Trial courts shall inform the Court Administrator relative to the need for jurors, and the Court Administrator shall notify the Clerk of the court concerning specific assignments. Literature for jurors shall be disseminated under the supervision of the Court Administrator as directed by the presiding judge.

Adopted effective December 29, 1995.

RULE 4-9

JURY TRIALS

A. Availability of Party or Counsel During Jury Deliberations. During jury deliberations, counsel and *pro se* parties shall keep the court informed of their location and shall keep themselves available on short notice personally or by telephone, as ordered by the court.

B. Absence of Party or Counsel on Receipt of Verdict. Unless otherwise requested, the court will not deem it necessary in civil cases that any party be present in person or by counsel when the jury returns to the courtroom with its verdict.

C. Presence of Defendant in Criminal Cases. Unless otherwise ordered by the court, all defendants in criminal cases shall, during the deliberations of the jury, remain in the building in which trial was held.

D. Six-Person Jury. Civil cases may be tried to a six-person jury by stipulation of the parties and approval by the court.

E. Jury Impanelment; Divisions of Court; Priority. For the purpose of jury trials, the court shall be divided into two groups, Divisions A and B, which shall alternate jury panels on a monthly basis. Judges assigned to Division A shall impanel juries during the month of January and each odd-numbered month thereafter in each calendar year. Judges assigned to Division B shall impanel juries during the month of February and each even-numbered month thereafter in each calendar year. Unless otherwise directed to do so by the presiding judge, the Court Administrator shall provide no juries to a judge other than during the assigned months. If the need arises for a judge to impanel a jury other than during the assigned month, the judge shall communicate such need to the presiding judge, and the presiding judge shall then make a determination whether the requesting judge should be allowed to impanel a jury other than during that judge's assigned month.

F. Inadequate Number of Jurors. When there is not a sufficient number of jurors immediately available, the Court Administrator shall give priority to those courts trying criminal matters.

Adopted effective December 29, 1995; amended effective June 25, 1999.

RULE 4-10

CASE PROGRESSION

A. Case Progression Standards. In all civil cases in which neither a Proposed Scheduling Order nor a Certificate of Readiness for Trial has been filed within the time frames specified in the Case Progression Standards of the Nebraska Supreme Court, the District Court Administrator shall give notice by mail to each party that, within thirty (30) days from the date of the notice, either a Proposed Scheduling Order or a Certificate of Readiness for Trial must be filed. If neither a Proposed Scheduling Order nor a Certificate of Readiness for Trial has been filed within the prescribed time, the case will be dismissed by the presiding judge.

B. Case Progression Dismissals. When a case has been dismissed for lack of prosecution pursuant to this rule, the parties may request that the case be reinstated to the court's active docket, but only upon (1) the showing of good cause why the case should be reinstated and (2) the filing of a Proposed Scheduling Order or a Certificate of Readiness for Trial. The judge to whom the case is assigned may, in the judge's discretion, reinstate the case.

C. Case Progression Filing Procedures. In all civil cases, including appeals, either a Certificate of Readiness for Trial or a Proposed Scheduling Order and one (1) duplicate copy shall be presented to the District Court Administrator.

The District Court Administrator shall then review the Certificate of Readiness for Trial or the Proposed Scheduling Order to ensure that all information required by these rules has been provided. If any defect is discovered, the party presenting the Certificate of Readiness for Trial or the Proposed Scheduling Order shall correct the defect. The

District Court Administrator-approved Certificate of Readiness for Trial or Proposed Scheduling Order shall then be filed with the Clerk of the District Court. The District Court Administrator shall provide the Certificate of Readiness for Trial and Proposed Scheduling Order forms for filing. The certificate shall be filed only after all discovery proceedings have been completed.

D. Certificate of Readiness For Trial Requirements. The Certificate of Readiness for Trial shall contain the following information:

1. The full names of the parties;
2. The docket and page number of the case;
3. The date on which the complaint or petition, or the most recent amendment thereto, was filed and the date on which the answer or other responsive pleading, or the most recent amendments thereto, was filed;
4. The type of case according to designations specified by the District Court Administrator;
5. The number of days required for trial, as estimated by the party filing the certificate;
6. A statement that the issues are joined; that all discovery, including depositions, has been completed; and that the testimony of all necessary witnesses is available;
7. A statement identifying any jury panel week during which counsel is not available for trial;
8. The name and attorney identification number of trial counsel for each party;
9. Whether a pretrial conference is requested;
10. The docket number and caption of any case that has been consolidated with the case in which the certificate is being filed;
11. Whether the trial will be to a jury or non-jury.
12. In each Domestic Relations Case, the certificate shall also include the following information:
 - a. whether there are or are not minor children of the marriage;
 - b. whether a parenting plan has been submitted pursuant to Rule 4-3;
 - c. whether the parties have attended the parent-education seminar pursuant to Rule 4-3;

d. whether the parties have attempted mediation pursuant to Rule 4-3, and, if not,

e. whether the parties' participation in mediation pursuant to Rule 4-3 has been waived pursuant to court order.

E. Proposed Scheduling Order Requirements. The Proposed Scheduling Order shall be signed by all parties to the case, and it shall contain the following information:

1. The full names of the parties;
2. The docket and page number of the case;
3. The type of case, according to designations specified by the District Court Administrator;
4. Whether a pre-trial/scheduling conference is necessary and, if so, the date of the proposed conference;
5. The agreed-upon date by which all parties shall complete fact discovery;
6. The agreed-upon date by which all amendments to pleadings and all motions for joinder of parties or claims shall be filed;
7. The agreed-upon date by which all expert witnesses shall be designated and discovery involving those experts shall be completed;
8. The agreed-upon date by which all motions for summary judgment shall be filed;
9. The agreed-upon date by which witness lists shall be submitted and the date by which all documents which may be offered in evidence shall be identified;
10. Whether the trial will be to a jury or non-jury;
11. The proposed trial date;
12. The anticipated duration of the trial.
13. In each Domestic Relations Case, the scheduling order shall also include the following information:
 - a. whether there are or are not minor children of the marriage;
 - b. whether a parenting plan has been submitted pursuant to Rule 4-3;

c. whether the parties have attended the parent-education seminar pursuant to Rule 4-3;

d. whether the parties have attempted mediation pursuant to Rule 4-3, and, if not,

e. whether the parties' participation in mediation pursuant to Rule 4-3 has been waived pursuant to court order.

F. **Objection to Certificate of Readiness for Trial.** Any party's objection to the Certificate of Readiness for Trial shall be filed within ten (10) days of the date on which the certificate has been served on the objecting party. The objecting party shall file a pleading entitled Exception to Certificate of Readiness, and the pleading shall state with specificity the reasons for the objection. Upon striking a Certificate of Readiness for Trial, the court shall require the parties to submit to the court a Proposed Scheduling Order, signed by all parties in the format prescribed by the District Court.

G. **Judicial Review of Proposed Scheduling Order.** After the filing of the Proposed Scheduling Order with the Clerk of the District Court and review of the Proposed Scheduling Order by the judge to whom the case is assigned, the judge may approve the Proposed Scheduling Order as agreed upon by the parties, or, upon notice to the parties, may schedule the case for a pre-trial/scheduling conference. Nothing contained in this Rule shall preclude the judge to whom the case is assigned from setting a scheduling conference at any time and entering a scheduling order thereafter. The Court's entry of a scheduling order shall remove the case from the case-progression dismissal list.

H. **Organization of Trial List.** A civil case to be tried to a jury will be noted on a trial list managed by the District Court Administrator (1) when a party files a Certificate of Readiness for Trial or (2) when the parties file a Proposed Scheduling Order signed by all parties, in the format specified by the District Court. The trial list shall contain the docket number and caption of the case and the names of the attorneys, if any, who will represent the parties at trial. It shall be the duty of all interested parties to promptly notify the Clerk of the District Court of any change of trial attorneys and of any error in designation, whether on the trial list or on the Certificate of Readiness, or on the Proposed Scheduling Order. The District Court Administrator may assign additional cases for trial at any time and may transfer cases to other courts.

I. **Trial Priority.** When there exists a conflict in trial dates exists, the trial court with the lowest assigned trial number shall have priority.

J. **Special Settings.** Upon request of either party, the judge to whom the case is assigned shall determine whether the case shall be specially set for trial.

Adopted effective December 29, 1995; amended effective June 25, 1999; amended effective January 18, 2007.

RULE 4-11

APPOINTMENT OF COUNSEL FOR INDIGENTS

Before the claim of any attorney appointed by the court is allowed, such attorney shall make a written motion for fees, positively verified, stating time and expenses in the case. Counsel shall also state in the motion that counsel has not received and has no contract for the payment of any compensation by the defendant or anyone in the defendant's behalf, or if counsel has received any fee or has a contract for the payment of same, to disclose the same fully so that the proper credit may be taken on counsel's motion.

When a court-appointed guardian *ad litem* makes application for payment of fees, if the indigence of either party to the action is at issue such that the county may be ordered to pay the fees and costs, the guardian shall serve a copy of the fee application and notice of hearing upon the County Attorney. The County Attorney may appear at the hearing to represent the interests of the county or may file a written waiver of appearance.

When the award of fees is expected to exceed \$2,000, the judge to whom the case is assigned may, in the judge's discretion, request that the presiding judge, or, in the absence of the presiding judge, the acting presiding judge, appoint two additional judges who, together with the judge to whom the case is assigned, shall determine the fee by majority vote.

Adopted effective December 29, 1995.

RULE 4-12

ASSIGNMENT OF CASES

A. Assignment of Cases. Cases shall be assigned to a judge by random selection through use of computerized or manual means.

B. Case Consolidation. A motion for consolidation of cases for discovery purposes or trial shall be heard by the judge to whom the case with the lowest docket and page number is assigned, and by whom the consolidated case will be heard.

C. Felony Companion Cases. Companion cases are (1) those in which multiple defendants are charged, in separate informations, with crimes arising out of the same set of facts, (2) those in which separate informations are filed contemporaneously against a single defendant, or (3) those in which a defendant initially charged with a felony offense which is currently pending is subsequently charged with a criminal offense. The County Attorney shall, at the time of filing each information, note on the information the case title and docket number of each companion case, as defined by this rule, and the Clerk of the District Court shall assign each such companion case to the judge to whom is assigned the case with the lowest docket number.

D. Criminal Appeal Companion Cases. On receiving notice of appeal from County Court, the prosecutor shall, on a form provided, notify the clerk of the case title and docket number of any previously filed appeal by a different defendant involving the same incident, and the appeal shall be assigned by the clerk to the judge having the lowest docket number of the previously filed appeal by the different defendant, but involving the same incident. When appeals are taken in separate cases consolidated for trial in the County Court, the clerk shall assign all to the same judge.

E. Postjudgment Criminal Matters. Postjudgment criminal matters, including probation-revocation proceedings, applications for postconviction relief, annual reviews of convicted sex offenders, and annual reviews of individuals found not responsible by reason of insanity, shall be assigned to the judge by whom the case was tried, or to that judge's successor. For the purpose of probation-revocation proceedings, any new felony charge filed against a defendant whose probation is sought to be revoked shall be assigned to the judge by whom the probation-revocation proceeding will be heard. Any companion case to that new felony, as defined by Rule 4-12C, shall likewise be assigned to the judge by whom the probation-revocation proceeding will be heard. Any new felony charge filed against an individual who has completed probation or a term of incarceration shall be assigned to a judge randomly, pursuant to Rule 4-12A.

F. Domestic Abuse Protection Orders. For the purpose of assignment of applications for a domestic abuse protection order, companion cases shall be those situations (1) in which one or multiple petitioners simultaneously apply for a protection order against the same person or persons, (2) in which the petitioner is a party to a currently pending action to obtain a protection order involving the same person or persons, or (3) in which the petitioner or respondent is a party to a domestic relations or paternity action which is currently pending before the court.

If, upon receiving the petition for filing, the Clerk of the District Court determines that the case is a companion case under any one of the foregoing three criteria, the case or cases shall be assigned to the judge to whom the first such case is assigned, or to the judge who has pending before her or him a previously filed protection order, domestic relations, or paternity matter. All other cases shall be assigned to a judge by random selection through computerized or manual means.

G. Civil Companion Cases. Companion cases are those involving (1) the same parties arising from the same action, (2) multiple plaintiffs arising from the same transaction, (3) multiple defendants arising from the same transaction, or (4) multiple plaintiffs versus the same defendant or multiple defendants arising from substantially identical transactions. The party shall, at filing, if known to the party, note companion case titles and docket numbers, and the Clerk shall assign all companion cases to the judge with the case that has the lowest docket number.

Adopted effective December 29, 1995; amended effective November 22, 1996; Rule 4-12(C) and (E) amended October 17, 2001.

RULE 4-13

BONDS AND SURETIES

A. Bond Authority. No person who is in the business of providing bonds shall do so in an individual capacity, or as attorney-in-fact for a surety company, without the approval of the Judges of the Fourth Judicial District. Before one may act as an attorney-in-fact, such person shall furnish to the presiding judge a copy of the last financial statement the principal was required to file with the proper state office of the state of its domicile, reflecting its financial condition as of the date required for the filing of said report. All persons in the business of providing bonds acting in an individual capacity shall furnish, under oath, such financial statement or net worth statement as the presiding judge may require.

B. Solicitation. Persons engaged in the business of providing bonds shall not directly or indirectly solicit any indemnitee to employ any particular attorney nor make the suretyship contingent upon employment of a particular attorney. Neither shall any person engaged in the business of providing bonds charge or receive excessive pay or reward or require excessive collateral.

C. Monthly Report. On the last day of each month, any person engaged in the business of providing bonds shall file a report with the Clerk of the District Court, listing all cases in which such person is surety, the names of the indemnitee on bonds, the amount of the bonds, the security held, the premiums charged, and any forfeited bonds that remain unpaid.

D. Surety's Justification. Bonds other than corporate surety bonds shall have appended a justification under oath by the surety or sureties, stating the condition of the bond; in criminal bonds the justification shall include a description of the property owned by the surety and the encumbrances, if any. Such a bond must be approved in writing by a member of the County Attorney's Office before presentation for further approval by the court.

E. Cash Bonds. Cash bonds may be deposited with the Clerk of the court but only upon execution and filing of a written document setting forth the undertaking.

F. Release on Own Recognizance. Under proper circumstances a defendant in a criminal action may be released on the defendant's own recognizance upon the filing of a written document setting forth the conditions under which the release is granted.

G . Surrender of Bonded Person. One who has provided a bond desiring to surrender the bonded person to the custody of authorities must do so in open court within twenty-four hours after the bonded person is placed in confinement. The amount of the premium and other matters may be inquired into at that time.

H. Annual Report. One engaged in the business of providing bonds shall, on or before the 15th day of January of each year, deliver to the presiding judge a report certified by a bonded abstracting company, giving the following information concerning each outstanding bond forfeiture since the previous similar report: Docket and Page Number; Title of Case; Nature of Case and Amount of Bond; Date of Forfeiture, Order of Forfeiture, and all subsequent orders. Within ten (10) days after the filing of such report, one engaged in the business of providing bonds shall file an additional report, stating which forfeitures have since been paid and the reasons, if any, for nonpayment.

Adopted effective December 29, 1995.

RULE 4-14

EXHIBITS

A. Public Records As Exhibits. In all cases where books, files, or records, or parts thereof belonging to or taken from the records of public offices are offered in evidence or are marked for identification to be offered at a pretrial conference, it shall be the duty of the party offering the same to furnish true copies of the same to the court reporter and the opposing counsel before the offer.

B. Documentary Exhibits. All documentary evidence which is not impeaching or rebuttal in nature shall be presented to the court reporter prior to trial, marked for identification, and exhibited to the opposing party for inspection.

Adopted effective December 29, 1995.

RULE 4-15

PRETRIAL CONFERENCES

Pretrial conferences will be on order of the court, consistent with Neb. Ct. R. of Dist. Ct. Pretrial Proc. (rev. 2000), and shall specify the date, hour, location, requirement placed upon counsel, the manner in which the conference will be held, and any other matters the court deems appropriate. A party represented by counsel shall appear at such conference through the attorney who is to conduct the trial, or by trial counsel's co-counsel having full knowledge of the case and possessed of authority to bind the party by stipulation.

Adopted effective December 29, 1995.

RULE 4-16

COURT FILES

A. Except under exceptional circumstances, and then only with the special permission of a District Court judge for good cause shown, no person other than the judges or District Court personnel shall remove from the office or possession of the Clerk of the District Court any records, papers, or files, including transcripts and bills of exceptions, pertaining to the cases in the court.

B. If a District Court judge grants permission to remove from the Clerk's Office any records, papers, or files, the person to whom the permission is granted shall sign a written receipt for such materials. The receipt shall identify with particularity the materials being removed and shall include (1) the name, address, and telephone number of the person who is removing the materials and (2) the name, address, and telephone number of the person on whose behalf the materials are being removed.

The records, papers, or files shall be returned to the Clerk of the District Court within three (3) working days of the date on which they are removed, including the day of removal, and in no event shall the materials be returned later than one (1) working day prior to any court proceeding in the case to which they relate. The failure to return any records, papers, or files in compliance with the provisions of this rule shall result in revocation of the removal privilege of the attorney, firm of attorneys, or abstractor on whose behalf the materials were removed. The privilege shall not be restored except as the presiding judge may direct. The presiding judge may impose such other penalties and sanctions as may be appropriate for violation of this rule.

C. Any person may obtain photocopies of any public filings at such reasonable cost as the Clerk of the District Court shall determine.

Adopted effective December 29, 1995; amended October 26, 2005.

RULE 4-17

MISCELLANEOUS

A. Outside Judge. A district judge from outside this district shall not be called to hear a case without the approval of the presiding judge, and all requests for assistance from outside the district shall be channeled through the presiding judge.

B. Senior Practice. A law student who is certified as eligible for senior practice in accordance with the rules of the Supreme Court of Nebraska may appear and participate in proceedings in District Court only in the actual presence of the supervising attorney, who shall in each proceeding introduce the student to the judge and request affirmative consent to the student's participation.

C. Restraining Orders. Restraining orders, orders for attachment or garnishment prior to judgment, orders granting leave to depose witnesses less than 20 days after the commencement of the action, and similar orders will not be considered until a petition is filed. A copy of the petition, any necessary motions, the docket sheet, and a proposed order must be presented at the time of hearing.

D. Official Newspaper. The Daily Record is the official court newspaper for the purpose of publishing court calls, default dismissals, cases reinstated for trial, and such matters including notices to attorneys, notices regarding jury panels, and all other matters left to the discretion of the court.

E. Witness Fees. When a person is subpoenaed or appears voluntarily as a witness in any case, it shall be the duty of the party at whose instance the witness appeared to see that the attendance of such witness is properly registered with the Clerk of the court. In the absence of such being done, it shall not be incumbent upon the Clerk to tax fees for such witnesses as costs in the case on trial; provided, however, that upon motion for retaxing costs the court may order such fees taxed as costs.

F. Garnishment Proceedings. Upon receipt by the Clerk of a debtor's request for hearing on a garnishment proceeding, the Clerk shall promptly enter the request into the computer for assignment to a judge and generation of a notice directed to the judgment creditor, which shall be delivered promptly to the Court Administrator who shall mail it to the judgment creditor. The notice shall include the title and number of the case, the date of receipt by the Clerk of the request for hearing, the name of the judge to whom the hearing is assigned, a requirement that the judgment creditor schedule the hearing with the judge's bailiff within 10 days of the date of the filing of the judgment debtor's request, and that the judgment creditor promptly give notice of the hearing to the judgment debtor.

Adopted effective December 29, 1995.